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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 21

Application Number: 09/871,199

Filing Date: May 31, 2001

Appellant(s): KAIN, JAMES M.

Kain, James M.
For Appellant

MAILED

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GROUP 3600

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11 June 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 2, and 3, 9, 11, 27-29, as well as 13-14, 17, 26, and 15-116, and 18-24 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2,792,054	Muoio	05-1957
3,297,358	Coutts et al.	01-1967
3,279,848	Walker	10-1966

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 6-8, 10, 12, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Muoio. This rejection is set forth in prior Office Action, Paper No. 8.

Claims 2, 3, 9, 11, and 27-29 are rejected under 35 U.S.C. 103(a) as being anticipated by Muoio in view of Coutts et al. This rejection is set forth in prior Office Action, Paper No. 8.

Claims 4, 5, 30, and 31 are rejected under 35 U.S.C. 103(a) as being anticipated by Muoio in view of Coutts et al. as applied to claims 2, 3, 9, 11, and 27-29. This rejection is set forth in prior Office Action, Paper No. 8.

Claims 13-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muoio in view of Coutts et al. as applied claim 2, 3, 9, 11, and 27-29 and further in view of Walker. This rejection is set forth in prior Office Action, Paper No. 8.

(11) Response to Argument

The rejections set forth in Office Action, Paper No. 8 correctly address all the limitations recited in pending claims 1-31, therefore the rejections are maintained. For purposes of Appeal, proposed amendments to claims 1, 15, 25, and 27 have been entered. The propose amendment to claim 1, line 8 clarifies the claim such that the rejection under 35 U.S.C. 112 second paragraph is withdrawn, but fails to place claim 1-31 in condition for allowance.

The Applicant argues that the rejection of claims 1, 6-8, 10, 12, and 25 as being anticipated by Muoio under 35 U.S.C. 102(b) is in error because Muoio fails to disclose a juvenile vehicle seat having a cantilevered armrest including a free end. Figure 1 of Muoio shows an armrest projecting from the seat back. It is the Examiner's position that the armrest of Muoio is a cantilevered armrest because the armrest is supported and connected to the seat back at only one location, thus meeting the definition cited by the Applicant. Further, the Applicant argues that the armrest of Muoio does not have a free end because the arm structure 28 (Fig. 1) has in fact two ends. However, it is the Examiner's position that the cantilevered armrest of Muoio is the structure projecting perpendicularly from the seat back which is not supported by any other seat structure, thus the ends of the armrest are free ends. Lastly, the Examiner notes that the Applicant is interpreting the entire length of bar 28 (Fig. 1) of Muoio as the armrest. The Examiner contends that this interpretation is over limiting and that the armrest shall be interpreted as the support for the user's arm that projects from the seat back which does not include the support for the folding seat portion 11 (Fig. 1) located below the armrest.

The Applicant argues that the rejection of claims 2, 3, 9, 11, and 27-29 as being unpatentable over Muoio in view of Coutts et al. under 35 U.S.C. 103(a) is in error because Coutts et al. fail to teach a second fastener located below the arm. It is noted that the Applicant agrees Coutts et al. show two fasteners to mount the armrest to the back. Please see Figure 1 of Muoio for the teaching that the juvenile vehicle seat has a support mount 25 (Fig. 1) with a first fastener coupled to an upper wing of the support mount. With regard to claims 2, 3, and 27-29, the claim limitations merely require that the second fastener is arranged to lie below the top surface of the arm and above the seat bottom along a lower edge and/or lower wing of the support mount. Similarly, claims 9 and 11 require that the "second fastener is coupled to the lower wing" wherein the support mount includes flanges that each have a lower wing extending below the arm of the cantilevered armrest. In Figure 1-3, Coutts et al. clearly show that the juvenile vehicle seat has an armrest support mount having first and second fasteners coupling the support mount to the seat back wherein the second fastener is positioned to lie below the top surface of the armrest and be in a spaced-apart relation to the seat. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the support mount of Muoio such that each flange has a second fastener on a lower wing located below the arm of the cantilevered armrest, such as the support mount disclosed in Coutts et al. One would have been motivated to make such a modification in view of the suggestion in Coutts et al. that the upper and lower connections of the support mount to the seat back allow for an improved rigid connection in order to withstand the rigors of sudden turns and quick stops necessary

for a juvenile vehicle seat. Although the Applicant argues that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning because there would be no motivation to place the second support below the arm, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Next, the Applicant argues that the rejection of claims 4, 5, 30, and 31 as being unpatentable over Muoio in view of Coutts et al. under 35 U.S.C. 103(a) as applied to claims 2, 3, 9, 11, and 27-29 is in error because it would have been hindsight reasoning to have on fastener longer than the other. However, it would have been an obvious matter of design choice to make the specific relative lengths since the Applicant has not disclosed that having the specific fastener length and/or type solves any stated problem or is for any particular purpose and it appears that the juvenile vehicle seat would perform equally well with any well known length and/or type relative fasteners. In addition, it would have been obvious to one of ordinary skill in the art to modify the relative lengths of the fasteners because of the legal precedent established by the prior case *In re Rose*, 105 USPQ 237 (CCPA 1955) which states that a modification in size and/or length is ordinarily within the skill of the art. Also note that the relative lengths of the first and second fasteners would have been obvious at the time of the Applicant's

invention because of the legal precedent established by the prior case In re Aller, 105 USPQ 233 (CCPA 1955) which states that the use of preferred materials and the optimum or workable ranges discovered by routine experimentation is ordinarily within the skill of the art.


Lastly, the Applicant argues that the rejection of claims 13-24 and 26 as being unpatentable over Muoio in view of Coutts et al. under 35 U.S.C. 103(a) as applied to claims 2, 3, 9, 11, and 27-29 and further in view of Walker is in error because Walker fails to a load support panel arranged to lie in a fixed position relative to the arm. Figures 1 and 2 of Walker clearly show that the juvenile vehicle seat has an armrest 42 (Fig. 2) with a support mount 54 (Fig. 2) and coupled to the seat back 15 (Fig. 2) wherein the support mount further includes a load support panel 49 (Fig. 2) to block pivotal movement of the armrest. The Applicant argues that the arm taught in Walker can move relative to the load support panel and, therefore, lacks a teaching to provide the anti-rotation force element in a fixed manner. However, the load support panel of Walker does lie in a fixed position relative to the arm and blocks clockwise pivotable movement of the armrest below the horizontal plane, therefore meeting all the limitations required by the claims. Although the armrest of Walker may rotate between a vertical position and a horizontal position (Fig. 2), the claim limitations do not necessitate that the armrest remains stationary and fixed at all times. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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